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10 Attorneys for Plaintiff
11 FACEBOOK, INC.

12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA
14 SAN JOSE DIVISION
15

16 FACEBOOK, INC.,

17 Plaintiff,

18 v.

19 STUDIVZ LTD., HOLTZBRINCK
20 NETWORKS GmbH, HOLTZBRINCK
VENTURES GmbH AND DOES 1-25,

21 Defendants.
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Case No. 5:08-cv-03468 JF

**SUPPLEMENTAL DECLARATION
OF JULIO C. AVALOS IN SUPPORT
OF FACEBOOK'S OPPOSITION TO
DEFENDANTS' MOTIONS TO
DISMISS**

Date: February 13, 2008

Time:

Judge: Honorable Judge Fogel

1 I, Julio C. Avalos, declare as follows:

2 1. I am an attorney with the law firm of Orrick, Herrington & Sutcliffe LLP, counsel
3 for Plaintiff Facebook, Inc. I make this Declaration in support of Facebook's Motion to Compel
4 StudiVZ Ltd., Holtzbrinck Ventures GmbH and Holtzbrinck Networks GmbH to Permit
5 Inspection of Documents and Things Pursuant to Civil L.R. 7-1 and 37-2. I am an active member
6 in good standing of the California State Bar. Except as set forth herein, I have personal
7 knowledge of the facts stated herein and if called as a witness, could and would competently
8 testify thereto.

9 2. On January 6, 2009, I, along with my colleague Tom Gray, met and conferred with
10 Defendants' counsel Stephen S. Smith and his partner William Walker. Near the end of the
11 conference, Mr. Gray raised the issue of Facebook's upcoming January 16 deadline to oppose
12 Defendants' motions to dismiss. Mr. Gray stated that it appeared unlikely that Facebook would
13 receive the personal jurisdiction discovery that it sought prior to January 16 and that the parties
14 should agree to take the hearing for Defendants' motions off calendar. Mr. Smith responded that
15 he agreed to take the hearing off calendar for defendant StudiVZ, but would prefer not to so with
16 respect to the Holtzbrinck defendants. He would agree to a continuance of a few weeks, but
17 would not take the hearing off calendar because, he said, "I'm still hopeful that you guys will
18 agree to voluntarily dismiss them. I'd agree to doing it without prejudice like we did for the other
19 Holtzbrinck defendant. If you guys find out something later on, you'd be free to add them again,
20 but for now my goal is to get them voluntarily dismissed without producing any discovery. I
21 don't think they should be part of this case." Mr. Gray responded that he would prefer to take the
22 Holtzbrinck Defendants' motions to dismiss hearing off calendar as well, but that the parties
23 would talk about it again. The final word on the subject came from Mr. Gray, who sought
24 confirmation that Mr. Smith would agree to take StudiVZ off calendar and grant a few week
25 continuance with respect to the Holtzbrinck defendants. Mr. Smith stated, "That's right, but just a
26 few weeks, two or three weeks."

27 3. On January 14, 2008, two days before Facebook's deadline, Defendants' counsel
28 advised Facebook that he was reneging on this offer and would insist that Facebook file its

1 opposition to Defendants' motions to dismiss on January 16.

2 4. Facebook drafted its opposition in two days and timely filed it on January 16, 2009
3 at 11:58 p.m.. Facebook's time pressures were exacerbated by system-wide network
4 malfunctions that created blackouts that prevented Facebook's counsel, paralegals and secretarial
5 assistants from editing or working in the brief for significant periods of time on the night that it
6 was due. These system-wide problems appear to have affected Orrick's nationwide computer
7 networks, as they were felt by me in our firm's Silicon Valley office, Mr. Gray in the Orange
8 County office and where observed by one of our firm's IT specialists stationed in Wheeling, West
9 Virginia.

10 5. As a result of Defendants' eleventh hour demand that Facebook stick to the
11 schedule and the intermittent network malfunctions, the declarations in support of Facebook's
12 Opposition were filed shortly after the 12:00 a.m. deadline.

13 I declare, under penalty of perjury, that the foregoing is true and correct to the best of my
14 knowledge.

15 Executed this 17th day of January, at Menlo Park, California.

16
17
18 _____
Julio C. Avalos

CERTIFICATE OF SERVICE

I hereby certify that this document(s) filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non registered participants on January 17, 2009.

Respectfully submitted,

Julio C. Avalos